

Consumer/Family Directed Personal Assistant Services Agreement between the Consumer or Family and the Regional Center

1. Purpose

The purpose of this agreement is to define responsibilities for enabling a consumer or family member of a consumer of the Regional Center, to employ one or more personal assistants.

2. Parties to the Agreement

- a. The _____ Regional Center, established by the Division of Mental Retardation and Developmental Disabilities by authority of 633.100 RSMo (1994) and hereinafter referred to as the Regional Center.
- b. _____, a client of the Regional Center, or his or her family, hereinafter referred to as the employer.

3. Other involved entities, not party to this agreement

- a. Payroll Service Provider, a payroll office under contract with the Division, hereinafter referred to as the fiscal intermediary. The Payroll Service Provider will be an agent for, and provide payroll services for, the employer.

4. Explanation

A personal assistant employed in the home of, and working at the direction of, the person he or she supports, will ordinarily not qualify under the federal Fair Labor Standards Act (FLSA) as a self-employed independent contractor. The personal assistant must, nearly always, be considered an employee. He or she will therefore need to have payroll taxes withheld and paid on his or her behalf, including Social Security (FICA), and Federal and State Unemployment Insurance.

The fiscal intermediary will write payroll checks to personal assistants who are employed by the Division's clients or their families, withholding the necessary tax amounts, including employer's share, and paying these amounts to the proper authorities on a quarterly basis. In addition to withholding FICA and Unemployment, the fiscal intermediary will withhold income taxes. The employee will receive an explanation of withholdings with each payroll check or notice of direct deposit.

5. Basis of Payment

- b. In addition to this agreement with the family or consumer, the Regional Center will execute a contract with each of the family's or consumer's employees.
- c. The Regional Center will deposit funds with the fiscal intermediary to pay an agreed hourly rate for service provided to the employer by the employee.
- d. The fiscal intermediary will issue payroll checks and/or make deposits to the employee on behalf of the employer.
- e. Payment will be made only for services described and authorized in a plan of care agreed to by the employer and the Regional Center.
- f. Units of service are whole hours.
- g. Any service hours provided within a month beyond the number of hours authorized for that month will not be payable.
- h. Payment to the employee will be made only for services actually delivered by the employee.

- i. The employee shall have undergone a criminal background check with the Missouri Highway Patrol and an inquiry to the Missouri Division of Aging's and the Missouri Department of Mental Health's employee disqualification lists. The check and inquiry shall be initiated, at the latest, within two days of being employed, in accordance with the Code of State Regulations, 9 CSR 10-5.190.
- j. If the employee is determined by the background check and/or the inquiry to the disqualification lists to not be employable in accordance with 9 CSR 10-5.190, employment shall not be offered, or if already started, shall be terminated. The employee may request an exception under certain conditions specified in 9 CSR 10-5.190.
- k. The employee shall have qualifications and training as defined in the Division's catalog of services (copies of pertinent pages are attached).
- l. Any service hours provided before all requirements of this agreement and applicable contract(s) with employee(s) are completed will not be payable.

6. Method of Payment

- a. The Regional Center will furnish the employer with documents authorizing payment of the services included in the plan of care. These documents will specify maximum hours and rates for payment and the time frames to which these maximums apply. The Regional Center will also furnish the employer with forms with which to document services performed and time worked.
- b. The employee and employer shall be responsible for accurately recording the hours worked and services performed by the employee. This timesheet, once approved by the employer, becomes the basis for payment to the employee. Any falsification or other misrepresentation of the information on this record will constitute fraud. All payments made as a result of inaccurate timesheet information will be recouped from the employee and/or employer. Any apparent fraud will, in addition, be referred to law enforcement agencies.
- c. There will be two payroll periods per month. The first will begin on the first day and run through midnight on the 15th day of the month. The second payroll period will begin on the 16th day and run through midnight of the last day of the month.
- d. At the end of each payroll period, the employer will approve the time sheet completed by the employee, then forward it to the Regional Center. It must reach the Regional Center within five days after the end of the payroll period to be included in the payment process for that period.
- e. The fiscal intermediary will issue a paycheck to the employee or make a direct deposit in the employee's account on the last day of the payroll period following the period for which payment is being made. For example: payment for the first payroll period in a month will be issued on the last day of that month; the payment for the second payroll period in a month will be issued on the 15th day of the following month.
- f. If the Regional Center does not receive an employee's approved timesheet within five calendar days after the end of a payroll period, those hours worked will not be paid at the end of the next payroll period. Instead, those hours will be paid on the earliest possible subsequent payday. For example: the payment for the first payroll in January should be issued on January 31st. If the timesheet is submitted after the deadline (January 20th) but before the end of January, the amount of payment due will be processed together with the payroll for the second payroll period in January, and payment for wages earned will be issued on February 15th. If this occurs, the amounts of taxes withheld will vary slightly.
- g. The fiscal intermediary will withhold all taxes, including the employee's share of Social Security (FICA) and the employee's income tax. The fiscal intermediary will also withhold all of the employer's taxes, including the employer's share of FICA and both federal and state unemployment taxes. The fiscal intermediary pays these tax amounts to the appropriate authorities, maintains records of all withholdings, and furnishes the employee and employer with end of year statements for filing with income tax returns, etc.
- h. The employer must not supplement (make extra) payments to the employee outside of this contract. The records maintained by the fiscal intermediary will be the official records of the employer/employee relationship that will be reported to state and federal tax authorities. Both

the employee and employer could be subjected to prosecution for tax evasion if all earnings and taxes are not accurately reported to these taxing authorities.

7. Conditions

- a. The quality, appropriateness and timeliness of services reimbursed through this contract shall be subject to evaluation, through inspection or other means, by the Regional Center and the Division. Furthermore, if Medicaid payments are involved, the Missouri Department of Social Services and the Federal Department of Health and Human Services (the State and Federal Medicaid Agencies) shall also have the right to make such evaluation.
- b. The consumer or consumer's family understands and agrees that he or she is the employer of record, and that the employee is not, under any circumstances, an employee of the State of Missouri. The employer may employ up to four personal assistants at a time, with the agreement of the Regional Center. An employee may work for more than one family or consumer.
- c. Information shared with the employee by the employer or the regional center regarding the client shall be confidential.
- d. Payment does not include fringe benefits such as health insurance, sick leave, vacation or paid holidays.
- e. Any liability related to accidents or injuries incurred by employees while providing services is the responsibility of the employer.
- f. The employee and employer shall set the conditions of employment, and termination of employment shall be the prerogative of the employer. Repeated terminations by the employer, however, if done without cause, may make replacing staff more difficult. Finding replacement staff in this situation shall not be the responsibility of the Regional Center.
- g. The Regional Center shall immediately cancel its contract with the employee if: the employee fails to obtain a successful criminal background screen; is placed or found to have been placed on an employee disqualification list maintained by either the Missouri Division of Aging or the Missouri Department of Mental Health; is found to have committed abuse, neglect, or exploitation of the client; or is found to have committed any fraudulent act or otherwise to have violated the terms and conditions of this contract.

8. Agreement

- a. All parties may amend this agreement at any time with mutual agreement. Either party may terminate this agreement with thirty days advance notice to the other. This agreement shall last until terminated by one or both parties, or until no employees are being employed, or are expected to be employed, by the family or consumer.
- b. Signatures

(Employer)

Date: _____

(Regional Center Director or Designee)

Date: _____